

Page 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
STALIN RODRIGO REYES ESPINOZA,

PLAINTIFF,

-against-

Index No.:
515197/19

DAVS PARTNERS, LLC and KALNITECH
CONSTRUCTION COMPANY,

DEFENDANTS.

-----X

DATE: May 11, 2022

TIME: 12:35 P.M.

EXAMINATION BEFORE TRIAL of the
Defendant, KALNITECH CONSTRUCTION COMPANY,
By KOSTAS STOUPAKIS, taken by the Respective
Parties, pursuant to a Court Order, held via
videoconference, before Rivka Trop, a Notary
Public of the State of New York.

A P P E A R A N C E S :

GORAYEB & ASSOCIATES, P.C.

Attorneys for the Plaintiff

100 William Street

New York, New York 10038

BY: GREGORY GASTMAN, ESQ.

LAW OFFICES OF MICHAEL SWIMMER

Attorneys for the Defendant

KALNITECH CONSTRUCTION COMPANY

605 3Rrd Avenue, 9th Floor

New York, New York 10158

BY: ROBERT BRIGANTIC, ESQ.

RICHMAN & LEVINE

Attorneys for the Defendant

DAVS PARTNERS LLC

666 Old Country Road, Suite 101

Garden City, New York 11530

BY: KEITH RICHMAN, ESQ.

* * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

K. STOUPAKAS

Q. Sir, were you the gentleman, were you the person on behalf of Kalnitech who was negotiating this agreement with whoever hired you?

A. Yes.

Q. Thank you, sir.

Do you remember, who was it, who was on the other side, the owner or whoever was hiring you people, who were you dealing with?

A. David Kleeman.

Q. From your point of view, do you connect Mr. Kleeman, with the owner of the property or was he something different than that?

A. No, he was the owner of the property.

Q. Thank you, sir. I want to ask you about a different company, have you ever heard of a company called A.S.K., A.S.K. Electrical Corporation?

A. Yes.

Q. Do you know one way or the other, was this company, A.S.K. Electrical, were

1 K. STOUPAKAS

2 they involved in any way at this project,
3 for example, were they an owner, a tenant, a
4 construction company, were they involved in
5 some way?

6 A. Well, David Kleeman is A.S.K.
7 Electric.

8 Q. So you associate Mr. Kleeman with
9 the owner of the building and you associate
10 him with the company, A.S.K. Electrical;
11 would that be fair?

12 A. Correct.

13 Q. Thank you, sir.

14 Sir, the renovation job that we
15 are talking about, sir, do you know, was
16 this done for A.S.K. Electrical or was
17 A.S.K. Electrical maybe a former tenant; do
18 you know?

19 A. Can you hold on a second.

20 Q. Sir, with regard to that company
21 A., s.K. Electrical Corporation, sir, do you
22 know one way or the other, was this the
23 tenant that space was being built for or was
24 that the old tenant or do you know?

25 A. The space was being built out for

1 K. STOUPAKAS

2 Q. If you recall, sir, how did you
3 gentlemen get together, how did you find
4 each other?

5 A. Well, I know Dave for several
6 years. We worked together in the previous
7 company that I was at.

8 Q. Okay. Thank you.

9 Sir, for the Hempstead Avenue
10 project we have been talking about, was
11 Kalnitech the company that was hired to be a
12 general contractor for the project or were
13 they hired to be one of the subcontractors
14 or something else?

15 A. No, we did a certain portion of
16 work there. We were one of the contractors
17 on the job.

18 Q. So Kalnitech did certain portions
19 of work and other companies did other
20 portions of the work; correct?

21 A. Yes.

22 Q. Sir, was there a general
23 contractor over Kalnitech on this particular
24 project or no?

25 A. Aside from David?

1 K. STOUPAKAS

2 Q. Okay. Well, was David, from your
3 point of view, was David the general
4 contractor?

5 A. Well, it was his space, so I
6 guess.

7 Q. I understand it is his space, I
8 got that part.

9 What I am wondering, did
10 Mr. Kleeman or any of his companies, did
11 they have a daily presence on this job site
12 like a general contractor would?

13 A. Yes.

14 Q. Thank you, sir.

15 I am going to ask you a few
16 questions next about who we might find on
17 this job site from day to day, I am going to
18 ask you those questions next, okay?

19 A. Okay.

20 Q. Thank you.

21 I realize every day on a
22 construction site can be different, I
23 realize that, I realize people get sick,
24 they have vacation days, there is bad
25 weather days, I understand all that, sir.

1 K. STOUPAKAS

2 employees on this job site?

3 A. Aside from Duane, Mr. Kleeman.

4 Q. And the electricians, did the
5 Kleeman companies have other workers on this
6 job site or that is everyone, the Kleeman
7 companies?

8 A. That's everybody.

9 Q. Thank you, sir.

10 And there were other
11 subcontractors assisting on other portions
12 of the work, would that be fair?

13 A. Yes.

14 Q. Sir, are the other subcontractors,
15 do you know, sir, were they hired by
16 Mr. Kleeman's companies, were they hired by
17 Kalnitech, who hired the additional
18 subcontractors?

19 A. Well, I had brought in a few, a
20 few companies that I dealt with. And David
21 had brought in some other companies.

22 Q. Thank you, sir, thank you.

23 Sir, I am going to break that down
24 a little bit, and I have a few questions.

25 Sir, let me move onto the

1 K. STOUPAKAS

2 Kalnitech workers, these are employees of
3 Kalnitech.

4 A. Okay.

5 Q. What portion or portions of the
6 work did Kalnitech employees do on this job
7 site? For example, we did plumbing, we did
8 sheetrock, we did windows, you tell me, sir,
9 what portions of the work did your company
10 do?

11 A. So my portion did a little bit of
12 demo, a little bit of concrete work, a
13 little bit of painting, a little bit of
14 waterproofing in the basement, a little
15 patching on the roof, if they had leaks
16 while the stuff was going on.

17 Q. Thank you, sir.

18 Was that pretty much what
19 Kalnitech was doing or did you think of a
20 few more things?

21 A. For the most part, you know, just
22 little knickknacks, yes, hey, I need the
23 mailbox installed, can we knock this out of
24 the way, can we patch this.

25 Q. Thank you, sir.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

K. STOUPAKAS

reserving rights to a further deposition later, but that's probably very unlikely.

MR. BRIGANTIC: Just so it is clear. The invoices were produced in response to the preliminary conference order. That's fine but just know that the invoices for what Gus is talking about are the ones that were produced.

MR. GASTMAN: Thank you.

Q. Sir, I want to ask you next, please, about who you recall that the owner, in other words, Mr. Kleeman and his company, what subcontractors did they hire, either by name or by trade, any way you can?

A. He had brought in the framers, carpentry firm who did the frame out. Obviously, he did his own electrical. He brought in his mechanical contractor, the guy who did all the HVAC on the place and plumber. And, I think, roofer at the end.

Q. Thank you, sir. Sir, I heard about some other company name, let me locate it, I will ask a few questions about it.

1 K. STOUPAKAS

2 Sir, with regard to the project we have been
3 talking about, do you know anything about
4 some company called Jim Associates
5 Corporation?

6 A. Yes.

7 Q. Did that company have some role on
8 this project?

9 A. Yes.

10 Q. Who was Jim Associate's, for
11 example, were they one of the
12 subcontractors, who are they?

13 A. Yes, they were the subcontractor
14 that was brought in, I guess, to do the
15 finishes.

16 Q. And forgive me if this was covered
17 already, is that like the exterior stucco
18 work or this is somebody else?

19 A. No, this is all the interior
20 stuff.

21 Q. This the interior finished work?

22 A. Right.

23 Q. Do you recall who hired Jim
24 Associates for this project, was it
25 Kalnitech, Mr. Kleeman or somebody else?

1 K. STOUPAKAS

2 A. Well, they were direct with Dave.

3 Q. Mr. Kleeman hired that company?

4 A. Correct.

5 Q. Mr. Stoupakis, when Kalnitech did
6 have people on site during construction, did
7 Kalnitech, the company, supervise any of the
8 subcontractors?

9 A. Say that again, did they supervise
10 any of the subcontractors?

11 Q. I apologize, it is my job to be as
12 clear as I can.

13 Sir, Kalnitech, the company, when
14 Kalnitech was on site, was that company
15 supervising any of the subcontractors?

16 A. No.

17 Q. Sir, how about the subcontractors
18 that were brought in by Kalnitech, was
19 Kalnitech, the company, supervising those
20 subcontractors?

21 A. Well, yes.

22 Q. Sir, how about the other
23 subcontractors, when Kalnitech was on site,
24 were they supervising any of the
25 subcontractors hired by the Kleeman people

1 K. STOUPAKAS

2 or no?

3 A. No.

4 Q. So if I said that in another way,
5 tell me if I am right or wrong, please,
6 Kalnitech supervised the contractors
7 Kalnitech brought in but nobody else; would
8 that be fair?

9 A. Correct.

10 Q. Thank you, sir.

11 Sir, with regard to this project,
12 did you get to know anybody at Jim
13 Associates, did you have some go-to person
14 or name, if you had any questions or issues?

15 A. Say that one more time.

16 Q. Yes, sir.

17 Did you end up with some sort of
18 go-to person at Jim Associates, someone you
19 know a name, you could call if you had a
20 question or something?

21 A. Do I know anybody at Jim
22 Associates, is that the question?

23 Q. Yes, was there some person that
24 you recall from this project from Jim
25 Associates?

1 K. STOUPAKAS

2 A. Yes.

3 Q. And what do you remember, sir, who
4 was that person?

5 A. George Moscosco.

6 Q. Did Kalnitech or Jim Associates
7 ever work together somewhere else?

8 A. We worked together at my previous
9 company.

10 Q. Was that the same previous company
11 that you mentioned earlier that you knew
12 Mr. Kleeman from?

13 A. Yes.

14 Q. If you recall, what was the name
15 of this former company where you made some
16 connections?

17 A. Masterpiece.

18 Q. For people not familiar with
19 Masterpiece, is that plumbing, a general
20 contractor?

21 A. It is a construction firm.

22 Q. Do you know one way or the other,
23 did Jim Associates' employees do the
24 interior finishing work or did Jim
25 Associates subcontract that work out to

1 K. STOUPAKAS

2 towards the end, I guess when Jim Associates
3 started and we were ending, finishing or
4 whatnot.

5 Q. And is it your understanding that
6 the plaintiff, Mr. Reyes Espinoza, he was
7 working for that company, Jim Associates; is
8 that your understanding?

9 A. Correct.

10 Q. And this is somebody Mr. Kleeman
11 brought in, right, that company, right,
12 Mr. Kleeman brought them in, not you?

13 A. Say that again.

14 Q. Yes, sir.

15 This company, Jim Associates, they
16 were brought in by Mr. Kleeman's companies,
17 not you; correct?

18 A. When you say brought them in, we
19 both knew, we both know Jim Associates.

20 Q. For this particular project, can
21 you tell me which company hired Jim
22 Associates for this project?

23 A. I would -- Dave, so I would
24 imagine A.S.K.

25 Q. It was not you, not Kalnitech;

1 K. STOUPAKAS

2 did Duane give you any further information
3 other than what we already spoke about?

4 A. No.

5 Q. Do you know, one way or the other,
6 was there any video, surveillance, photo
7 gear set up at the job site that may have
8 captioned this accident when it happened?

9 A. I don't know.

10 Q. Did anybody ever tell you that
11 there are pictures or videos of the accident
12 itself? Did anybody ever tell you that?
13 Other than your lawyers, don't tell me that.

14 A. No.

15 (Whereupon, a short recess was
16 taken.)

17 Q. Sir, with regard to the project we
18 have been talking about, do you know any
19 company called Marfi Contracting, M-A-R-F-I?

20 A. Yes.

21 Q. What part of the job did they do?

22 A. They did the spray foam
23 insulation.

24 Q. Was Marty one of the
25 subcontractors hired by Kalnitech or not

1 K. STOUPAKAS

2 hired by Kalnitech?

3 A. No, they were one of the subs that
4 I brought on.

5 Q. Do you know what trade or trades
6 were working at the project on the date of
7 the accident, June 28th, 2019? We heard
8 about Jim Associates, but do you know, sir,
9 were there other trades working that day, if
10 you know?

11 A. I don't recall.

12 (Whereupon, an off-the-record
13 discussion was held.)

14 Q. Mr. Stoupakis, with regard to the
15 job that we have been talking about today,
16 did Jim Associates and company, were they
17 sometimes sending you the proposals instead
18 of Mr. Kleeman, does that sound right?

19 A. Say that again.

20 Q. Yes, sir.

21 With regard to the project we have
22 been talking about today, the Hempstead
23 Avenue job, did Jim Associates, the company,
24 sometimes submit their proposals to you,
25 Gus, rather than Mr. Kleeman?

1 K. STOUPAKAS

2 A. No.

3 Q. Was there another Gus on this job
4 that you know of, sir, or are you the only
5 Gus on this job site that you know of?

6 A. I am the only Gus that I know of.
7 (Whereupon, an off-the-record
8 discussion was held.)

9 Q. Putting aside lawyer
10 conversations, is there anything more about
11 this action that you know about that we
12 didn't talk about yet?

13 MR. BRIGANTIC: Objection to the
14 form of the question, but he could
15 answer.

16 A. Say that again one more time.

17 Q. Putting aside lawyer
18 conversations, because I am not allowed to
19 ask you about that, sir, is there anything
20 more about this accident that we have not
21 spoken about yet?

22 A. Do I know anything more about this
23 accident that we have not spoken about yet?

24 Q. Yes, sir?

25 A. Like what?

1 K. STOUPAKAS

2 daughters, Elana, Vanessa and Shayna.

3 Q. Did anyone ever tell you that or
4 are you just assuming?

5 A. No, I am just assuming.

6 Q. Shayna was who related to David
7 Kleeman?

8 A. Shayna was his daughter.

9 Q. Who was Vanessa?

10 A. Vanessa was his wife.

11 Q. When Mr. Gastman asked you who
12 hired you, Mr. Gastman asked you a question
13 who hired your company Kalnitech to perform
14 services?

15 A. David, David did.

16 Q. Now, when you say David, now, the
17 hiring of your services, Kalnitech services
18 was done verbally as opposed to a written
19 agreement; correct?

20 A. Yes.

21 Q. And when you say David hired you,
22 can you be more particular about which
23 entity or maybe both entities or somebody
24 else hired Kalnitech to perform services on
25 the project?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

K. STOUPAKAS

MR. BRIGANTIC: Objection to the
form of the question. But you could
answer.

A. A.S.K. Electric.

Q. A.S.K. Electric?

A. Right.

Q. Did Davs ever hire Kalnitech to
your knowledge?

A. No.

Q. And originally, there was a
question asked about various subcontractors
that, quote-unquote, you brought in and
various subcontractors that David brought
in; do you recall that line of questioning?

A. Yes.

Q. And I believe you testified that
both you and David knew Jim Associates;
correct?

A. Yes.

Q. And that was in connection with
your prior company, right?

A. Yes.

Q. And did you have a conversation
with David about bringing tin Jim Associates

1 K. STOUPAKAS

2 to do work on the project?

3 A. He probably asked me do I have
4 anybody I could recommend. And I had told
5 him you could go with Moscosca because he
6 knew his work. We had all worked together
7 on a previous project many years ago.

8 Q. And it is your understanding that
9 David or A.S.K. hired Jim Associates, not
10 Kalnitech; correct?

11 A. Correct.

12 Q. Did you ever have a conversation
13 with David Kleeman along the lines that Jim
14 was going to be a subcontractor of
15 Kalnitech, but that notwithstanding, they
16 were going to be a subcontractor of
17 Kalnitech, A.S.K. was going to pay Jim
18 directly?

19 MR. BRIGANTIC: Object to the form
20 of the question, but you could answer.

21 A. No, never.

22 Q. Did you have a conversation,
23 something along those lines?

24 A. No.

25 Q. So it was your understanding that

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

K. STOUPAKAS

clearly Jim Associates was a subcontractor of A.S.K. and not Kalnitech; correct?

A. Correct, they had met, I guess they discussed the scope of the work, they agreed to, I guess, a number and, you know it, that was it.

Q. Did you ever supervise any of Jim Associates work?

A. No.

No, at that point in time, they were in the finish it, so Dave was around a lot more often.

Q. So your company had no involvement with supervising of any of Jim Associates work?

A. No.

Q. Now, your attorney provided a certificate of insurance and date of the issuance of this certificate of insurance was dated July 16, 2019. And it refers to Kalnitech, your company, as the insured and the certificate holder as an additional insured to be A.S.K. Electrical Contracting Corp.

1 K. STOUPAKAS

2 Do you recall having your company
3 buy insurance from Falls Lake Insurance
4 company in connection with in project.

5 MR. BRIGANTIC: What was that
6 question?

7 Q. Do you recall Kalnitech purchasing
8 insurance from Falls Lake Insurance in
9 connection with this project?

10 A. Falls Lake Insurance was my
11 insurance carrier.

12 Q. Did they issue insurance to
13 Kalnitech with regard to this project?

14 A. Yes.

15 Q. And was A.S.K. Electric named as
16 an additional insured on the Falls Lake
17 Insurance, as far as you know?

18 A. Yes, I believe so.

19 Q. And that was effective January
20 2nd, 2019; correct?

21 A. No.

22 Q. January 3, 2019?

23 A. No, January 3rd is when, I
24 believe, my insurance policy began. We were
25 requested to provide the ACORD sometime in

1 K. STOUPAKAS

2 2019.

3 Q. Who requested the ACORD
4 certificate?

5 A. I don't remember if it was an
6 e-mail from Dave or Kavita from his office.

7 Q. What is your understanding of who
8 Kavita is?

9 A. Kavita is, I would say, like,
10 office manager who handles the books over
11 there.

12 Q. So this ACORD certificate that
13 your lawyer produced today is dated
14 July 16th, 2019 naming as additional
15 insured, A. S.K. Electric, is that the first
16 time, to your understanding, that that
17 request was made by David Kleeman?

18 A. Yes.

19 Q. July 16th, 2019?

20 A. Yes.

21 Q. And were you working on the
22 project on July 16th, 2019?

23 A. July, no, like I said, the bulk of
24 my work was already done. If I was there,
25 maybe just for like some punch list items